

out.

2 Q Well, I'm sorry. Right at the meeting when you
3 asked Mr. Kane a question and he said, "You don't need to
4 know that. I'm not going to tell you that" didn't you start
5 to have a concern about Mr. Kane right then?

6 A Technically, no. At this time he was part of the
7 organization that put everything together. He was an agent
8 for them. We were using the attorney that put everything
9 together and at this point we were a successful selectee, we
10 were pretty comfortable that we were moving forward, all
11 right. The issue of the alien came up and we were told it
12 was taken care of, there was a replacement for that
13 individual and it was no longer an issue.

14 JUDGE STEINBERG: But you said when you asked Mr.
15 Kane who alien was and he said, "You don't need to know
16 that" you said you were not happy with that answer.

17 THE WITNESS: Afterwards, reflecting upon it I
18 wish I had asked more questions at that time not realizing
19 the effects of not following up with that, yes, sir.

20 JUDGE STEINBERG: Okay. But at the time you were
21 happy with the answer or the answer satisfied you or --

22 THE WITNESS: The answer satisfied me.

23 BY MR. EVANS:

24 Q Well, this always strikes me as odd. You were at
25 a meeting and how many partners were at the meeting?

1 A At that time there were 14 partners.

2 Q Okay. And potentially you were told that there
3 was a problem with one of the partners being an alien,
4 right?

5 A Correct.

6 Q And potentially one of those people at the meeting
7 was one of the partners that had created what was
8 potentially a big problem for the partners?

9 A I don't know if all 14 partners were specifically
10 there, sir.

11 Q Okay. But 14 of --

12 (Multiple voices.)

13 A Okay. There were several others who were at the
14 meeting, some were spouses and some were members of the
15 partnerships that were members of Alee Cellular. So
16 specifically I couldn't go around the room and count noses
17 and say, "You know, the alien's got to be here," no.

18 Q It was a fairly small group of people, less than -
19

20 A Yes.

21 Q -- 25 people, let's say?

22 A Correct.

23 Q The image that always *comes* to my mind of this
24 meeting is the last supper where there's 12 people and one
25 of them is going to betray the others and everybody's

1 saying, "Is it me? Is it me?" except at your meeting nobody
2 -- well, I guessed you asked hut nobody --

3 A I asked.

4 Q -- but nobody came up with an answer.

5 A You know, maybe it was being naive or gullible at
6 the time I don't know, but I asked the question, "Who was
7 it?" Once again, the response was as I disclosed earlier.
8 Okay.

9 Q Let me tell you, after you asked that question and
10 got the response you got in private discussions with the
11 other partners did you ask them, "Do you know who it is?"

12 A I don't recall whether I went into that issue with
13 anyone else, no.

14 Q Were you curious about it?

15 A Basically, I wasn't as curious simply because,
16 once again, I was informed that it was taken care of, you
17 know, that it had been resolved and we were moving forward
18 It was not an issue.

19 Q Okay. Had you already voted to elect Mr. Kane as
20 of the time that question and answer?

21 A I don't recall.

22 Q All right.

23 MR. EVANS: This would probably be a good time to
24 break then.

25 JUDGE STEINBERG: Okay. Let's go off the record

1 and we'll take a break

2 (Whereupon, the above-entitled matter recessed for

3 lunch break at 12:10 p.m.)

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AFTERNOON SESSION

(1:26 p.m.)

JUDGE STEINBERG: Okay. Back on the record, please.

Mr . Evans?

MR. EVANS: Yes, thank you, sir.

Whereupon,

TERRY H. JONES

having been previously sworn, was called as a witness and was examined and testified further:

REDIRECT EXAMINATION (CONT'D)

BY MR. EVANS:

Q Mr. Jones, let me direct your attention to page five of your direct testimony and specifically to the very bottom of the page. It says there that, "The system provides service throughout the area covered by Altell sites to system users on a regular basis."

A Yes, sir.

Q I think you had indicated earlier in your testimony that Aleo only provides service to roamers in New Mexico 3?

A As of this time, yes.

Q All right.

A Our attempt is to actually have a customer base but we have not proceeded to do because of our license data.

1 Q Well, I wasn't sure what you meant by the last
2 line on page five, "Local service has been provided by our
3 managers with our approval." What does that mean?

4 A Well, Altell currently and prior to that Bell
5 Atlantic, all right, has been selling through them in that
6 territory for the local residents in New Mexico 3. We've
7 asked them to continue to do that and provide that service
8 to them since our license was in the status that it's in.
9 There's nothing which would prohibit them from doing that
10 but --

11 Q Well, I'm just trying to --

12 (Multiple voices.)

13 JUDGE STEINBERG: Okay. Did they hold the license
14 for the wire line provider in that area, do you know?

15 THE WITNESS: No. In fact, I don't know. I don't
16 know who holds it.

17 JUDGE STEINBERG: Okay.

18 BY MR. EVANS:

19 Q Well, Altell and previously Bell Atlantic is the
20 licensee adjacent to the Mexico 3 aren't they?

21 A Yes. The contiguous market.

22 Q So is the way it works that a customer in New
23 Mexico 3 would sign up with Altell as a customer there in
24 the adjacent market?

25 A They're signing up customers I don't know

specifically how and where they're doing it. We border
2 Albuquerque. They are the license holder of Albuquerque. A
3 lot of people commute back and forth from Albuquerque into
4 the New Mexico 3 are, the Valencia County area, and I don't
5 know whether they're selling their services to them in
6 Albuquerque or whether they actually have other
7 opportunities for people to acquire services in New Mexico
a 3. Maybe I don't understand your question.

9 Q Well, let me ask it this way. Are the only
10 revenues that you receive from Altell roamer revenues?

11 A Correct.

12 Q Or do they pay something else?

13 A Other than co-locations that we have on our
14 towers.

15 Q And by that you mean the leases that they pay for
16 publication -- the rental that they pay for publication?

17 A Rental that they collect for us.

18 Q Oh, right.

19 A Okay. And then remit it to us.

20 Q Okay. All right. Are you familiar with the
21 annual regulatory fee that licensees of the FCC have to pay?

22 A Is that the numbering?

23 Q No. There's something called "an annual
24 regulatory fee" that every -- for these purposes, every
25 cellular carrier has to pay to the FCC, usually in September

of each year --

2 A Mm-hmm.

3 Q -- based on the number of subscribers that you
4 have.

5 A Okay.

6 Q Will you accept that as a premise?

7 A Okay.

8 Q Were you aware of that?

9 A Since we don't have any subscribers at this point
10 in time the one that I was more familiar with was the
11 numbering requirement.

12 Q The North American --

13 (Multiple voices.)

14 A I think that's the -- yes. The 499.

15 Q Right. Do you file that 499 report?

16 A Yes.

17 Q Okay. But I take it from what you just said that
18 Alee does not make an annual regulatory fee payment based on
19 the number of its subscribers?

20 A I can't affirmatively answer that or negatively,
21 but to my knowledge I am not familiar with it, sir.

22 Q And you're the man who's in charge of the
23 financial aspects --

24 A The numbers, absolutely.

25 Q Right. So --

1 A Unless it's another form that I'm thinking of or
2 that you're thinking of I'm not familiar with the form.

3 Q It's a form that has to be filed annually in
4 September of every year and it's based on the number of
5 subscribers that you have.

6 A I don't recall the form.

7 Q And if you have no subscribers you wouldn't have
8 to pay that fee

9 A Then maybe that is the reason.

10 Q Has the situation you've just described always
11 been the case with Alee? You've always just served roamers?

12 A Yes, sir.

13 MR. EVANS: Your Honor, I'd like to ask that we
14 identify as Intervenor's Exhibit No. 2 a one page document
15 which is a photocopy of Rule 22.946 of the Commission's
16 Rules. This is a Rule that's current as of 2001.

17 JUDGE STEINBERG: 22.946?

18 MR. EVANS: Yes. That's the particular Rule that
19 is there in full on that page.

20 JUDGE STEINBERG: The document described will be
21 marked for identification as Intervenor's Exhibit No. 2.

22 (The document referred to was
23 marked for identification as
24 Intervenor's Exhibit No. 2.)

25 BY MR. EVANS:

1 Q I'd like to direct the witness' attention to
2 22.946(b) and ask that he read that.

3 A My copy is not -- I'm having difficulty reading
4 it.

5 JUDGE STEINBERG: At the top, the second column on
6 that page, 208.

7 THE WITNESS: Yeah. Mine is cut off.

8 BY MR. EVANS:

9 Q Well, if you'll read the rest of paragraph B and
10 when you get to the end I can maybe fill in for you.

11 (Pause)

12 A I'm having difficulty because I can't read the
13 words to the right.

14 Q Okay. It says, "Through the PSTN or if the system
15 intentionally serves only roamer stations."

16 A Oh, I'm sorry. Here.

17 (Pause)

18 I thought he was referring to paragraph 2(b) under
19 here.

20 MR. EVANS: Is there any way I show the witness
21 the original?

22 BY MR. EVANS:

23 Q I'm directing his attention to this paragraph,

24 A Yes. Now I'm having trouble with -- yes, sir?
25 Okay.

1 Q Did you see the part I directed you to that says,
2 "If the system is intentionally serving only roamer stations
3 it's not considered to be providing service to subscribers?"

4 JUDGE STEINBERG: You're paraphrasing?

5 MR. EVANS: Yes. I'm sorry.

6 THE WITNESS: Yes. But it also says, "If you
7 intend to serve only roamers." Our intention has always
8 been to service the public. Unfortunately, our license has
9 not allowed -- has created a limitation for us to be able to
10 go forward and do that.

11 BY MR. EVANS:

12 Q Well, let me ask you this.

13 JUDGE STEINBERG: Hold it. Let me -- your license
14 doesn't allow you to serve --

15 (Multiple voices.)

16 THE WITNESS: The status --

17 JUDGE STEINBERG: -- subscribers?

18 THE WITNESS: -- the status of the license has
19 been in question and as a result of that we have continued
20 to enhance the system but not provided service to or not
21 sell retail to the local market because we didn't **know** if
22 and when the license would be removed from us and then we
23 would not have any service to the local customer base then.

24 JUDGE STEINBERG: But that's a choice Alee made,
25 isn't it?

1 THE WITNESS: It would be a choice that Alee made.

2 JUDGE STEINBERG: But your license doesn't say --

3 THE WITNESS: It doesn't limit it. There's --

4 JUDGE STEINBERG: Okay.

5 THE WITNESS: Yeah. You're correct in that. We
6 have always wanted to have a local base, customer base, and
7 we were actually in negotiations to acquire the customer
8 base most recently when the decision came down from the
9 Appeals Court.

10 BY MR. EVANS:

11 Q Okay. But you did not acquire the customer base?

12 A We did acquire. We were in negotiations to
13 acquire it when that decision came down.

14 Q Well, let me specifically take you back in time to
15 the period after you got your construction permit. Did you
16 understand that you had a certain period of time during
17 which Alee had to construct the system and begin providing
18 service to subscribers in order to meet the terms of its
19 construction permit?

20 A Yes, sir.

21 Q And approximately what was the time period that
22 you had to do that?

23 A 18 months to get your first location and five
24 years in total to be fully constructed.

25 Q Okay. So you had 18 months from -- when was the

1 date of your grant to send New Mexico through?

2 A You're talking about the construction permit?

3 Q Yes.

4 A I don't recall the exact date. I believe it was
5 August of '89.

6 Q '89. So you had 18 months from then to get the
7 system constructed and begin providing service to
8 subscribers, right?

9 A Yes, sir.

10 Q Okay. Now having looked at what I've shown you
11 here in Rule 22.946 would you agree that you have not been
12 providing service to subscribers as the Commission defines
13 that term?

14 A I don't know. If you're talking about retail
15 subscribers we have -- to my knowledge we have not had any
16 retail subscribers on our system.

17 Q Okay. But I guess you're saying it was your
18 intention at some point to have other than roamer traffic?

19 A Absolutely.

20 Q Actually, you say you don't have any retail
21 subscribers, do you have any wholesale subscribers?

22 A What we are doing is providing service to other
23 providers of cellular to use the system on a roamer basis.

24 Q Are they wholesale customers of Alee or are they
25 roamer?

A They would be classified as roamer.

2 Q That's what I would think. So if you represented
3 to the Commission, if Alee represented to the Commission, in
4 1991 that you were, in fact, providing service to the
5 subscribers would that representation be incorrect?

6 A I don't know that I could answer that because we
7 were servicing the are. But if the subscribers have to be
8 specifically retail customers as to retail users I do not
9 believe that we have had a retail user on there other than
10 potentially some employees of Altell and/or Bell Atlantic
11 possible. I don't know for a fact.

12 Q If they were customers you would have had to be
13 paying the regulatory fee for that, wouldn't you?

14 A That would have been correct.

15 Q All right. Let me ask you to -- we're going to
16 switch gears here for a minute. Let me change the subject
17 and ask you to look back at Bureau Exhibit 23, the
18 partnership agreement.

19 A Yes, sir?

20 Q I was looking through that document to see .if I
21 could find what the duties and responsibilities of the
22 Executive Committee are and I couldn't find it in there.
23 Can you tell me if there's anything in there that defines
24 the duties and responsibilities of the Executive Committee?

25 A I don't think there's anything directly stated as

to an Executive Committee through this partnership
2 agreement. It does call for management of the partnership
3 and the employment of a manager.

4 Q Is that what the Executive Committee is, the
5 manager?

6 A I would say we've been taking on the management
7 role of the partnership.

8 Q Well, I guess what I'm asking is are you looking
9 at paragraph 12 of the partnership agreement?

10 A Yes. And paragraph 11.

11 Q Okay. Does the Executive Committee serve as the
12 manager as that term is defined in paragraph 12?

13 A I don't know if it clearly states all of the -- it
14 covers a substantial majority of what the Executive
15 Committee does, it appears to.

16 JUDGE STEINBERG: And are you referring to
17 paragraph 12?

18 THE WITNESS: I'm referring to paragraph 12.

19 BY MR. EVANS:

20 Q Well, sir, does that mean the Executive Committee
21 has been employed as the manager as it's described in this
22 paragraph?

23 A I don't know that it clearly defines what the
24 Executive Committee's function is but it's similar to what
25 the Executive Committee is performing.

1 Q Well, what I'm trying to get at is -- and there's
2 no mystery, I'm just trying to understand is there someplace
3 where the duties and responsibilities of the Executive
4 Committee are set out?

5 A To my knowledge no.

6 Q Okay. The Executive Committee was formed, you've
7 told us, at the December 1988 meeting, right?

8 A Yes.

9 Q And did somebody say, "Here's what the Executive
10 Committee is supposed to be doing?"

11 A At that time, no. It was just a means of
12 communicating through the Executive Committee instead of
13 having to communicate with all partners to our manager.
14 Then, subsequently, the Executive Committee took on the role
15 of the manager of the actual partnership.

16 Q Okay. But, for example, you've described how the
17 members of the Executive Committee reviewed things and
18 signed things. Who authorized you to do that?

19 A I believe the partners of the partnership
20 authorized us to do that. I would have to review the
21 partnership meetings to see where that may have come in, but
22 they not only authorized us to do it but would confirm our
23 actions periodically at partnership meetings.

24 Q Well, so do you think there was a partnership
25 meeting in which the partnership voted to authorize you to

1 sign things on behalf of the partnership? By you I mean the
2 Executive Committee

3 A That's from an Executive Committee standpoint we
4 are authorized to take care of normal operating
5 transactions, be it with the FCC or other functions and
6 that's how we view it. However, anything that would commit
7 the partners of the partnership where they would be a
8 significant change or an effect to the partnership would
9 require a partnership note.

10 Q Okay. How do you know that?

11 A Well, that is how we have handled the partnership
12 where the Executive Committee has just handled the day-to-
13 day operations of the partnership simply because it's too
14 difficult to do it with all partners involved in every
15 transaction.

16 Q All right. And so the role of the Executive
17 Committee has sort of developed de facto, would that be fair
18 to say?

19 A Well, that's not specifically written so I would -
20

21 Q It's not in the partnership agreement?

22 A No, sir.

23 Q And there's no other document that the partnership
24 has --

25 (Multiple voices.)

1 A Not that I'm aware of.

2 Q -- voted on and approved that says what your role
3 is supposed to be?

4 A Not specifically that I can recall.

5 Q Okay.

6 JUDGE STEINBERG: Does partnerships have bylaws?
7 I don't know. Does Alee have bylaws?

8 THE WITNESS: Not to my knowledge.

9 JUDGE STEINBERG: Okay.

10 BY MR. EVANS:

11 Q All right. Well, let me go back in time to a
12 question that you answered for Mr. DeJesus yesterday. You
13 said that you were on the initial Executive Committee,
14 right?

15 A Mm-hmm.

16 Q Starting in December 1988 and Mr. Bernstein was,
17 also.

18 A Yes, I believe that's correct.

19 Q And who was the third member?

20 A Initially the partnership asked Mr. Dolphin to be
21 on the Executive Committee along with Becky Jo Clark as an
22 alternate and **it** was determined that Mr. Dolphin would not
23 be eligible.

24 Q And why was he not eligible?

25 A Technically, Mr. Dolphin at the time did not have

1 a partnership interest.

2 Q Okay. What do you mean technically at the time?

3 A Well, he did not have a partnership interest.

4 Forget the word "technically."

5 Q His wife was --

6 A His wife --

7 (Multiple voices.)

8 Q -- was in the partnership --

9 A -- had the interest.

10 Q -- theoretically, right?

11 A Yes.

12 Q Okay. Was there any other reason why Mr. Dolphin
13 couldn't be on the Executive Committee?

14 A That was the reason as I recall. He was not a
15 partner so, therefore, we wanted strictly partners on the
16 Executive Committee.

17 Q Well, but there wasn't any rule **or** bylaw or
18 anything that prevented a non-partner from being on the
19 Executive Committee, was there?

20 A I don't recall.

21 Q Did Mr. Dolphin act as one of the Executive
22 Committee members even though he wasn't official?

23 A I do not believe that he did. I think that the
24 meeting took place and within a very short period of time
25 thereafter Becky Jo Clark assumed his position and he was

1 removed from the Executive Committee.

2 Q So he was originally on the Executive Committee?

3 A The partnership -- at the first partnership
4 meeting I believe they elected him as well as Mr. Bernstein,
5 myself and Becky Jo Clark as an alternate.

6 Q And by alternate that means that if one of the
7 partners died or became disabled that she would take over?

8 A Yes.

9 Q Okay. Is there an alternate Executive Committee
10 member now?

11 A Joel Bunis held that role for a period of time and
12 after which time he asked to be relieved of that duty and as
13 of this point I do not believe that we have anyone else who
14 is serving as an alternate.

15 Q And wasn't Mr. Bunis also at one point on the
16 Executive Committee, not as an alternate but actually on the
17 Committee?

18 A I would actually have to go and check my records
19 but I believe he may have been.

20 Q And when would that have been?

21 A Once again, I'd have to -- I'm not familiar with
22 the specific dates. I know that he served. I remember
23 specifically he served as an alternate. I don't remember
24 specifically him being directly on the Executive Committee.
25 We're going back 14 years.

1 Q I understand

2 A And now I'm trying to recall and, unfortunately,
3 my memory is not specific with Mr. Bunis because if he was
4 involved he was extremely active and was difficult to get a
5 hold of.

6 Q I understand it's been a long time since these
7 events and I'm amazed the recall that you have, Mr. Jones.

8 A So am I.

9 Q But you were always on the Executive Committee,
10 right?

11 A Yes, sir, I was.

12 Q And Mr. Bernstein was always on the Executive
13 Committee --

14 A Yes, sir.

15 Q -- right?

16 A Yes, sir.

17 Q Mr. Dolphin was on it briefly, right?

18 A Correct.

19 Q And then I thought you indicated that Ms. Clark
20 took over from Mr. Dolphin?

21 A I believe so.

22 Q Okay. Well, has she remained on it ever since or
23 did she go off --

24 A Yes.

25 Q -- to something else?

1 A No. She has been on the Executive committee since
2 she took over the position from Mr. Dolphin.

3 Q Okay. So if Mr. Bunis was on the Executive
4 Committee when would it have -- there are only three members
5 on the Executive Committee, right?

6 A That's why I know those three members were
7 actively involved and the other ones were either in or out
8 for a short period of time and I don't recall the specifics,
9 sir.

10 Q Okay. If you'll excuse me for a moment.

11 (Pause.)

12 Well, what has been Mr. Dolphin's role with the
13 partnership? You've explained that he was briefly on the
14 Executive Committee and his wife is a partner --

15 A Mm-hmm.

16 Q -- or a partner of a partner. What does Mr.
17 Dolphin do?

18 A At what point in time, sir? I mean forever?

19 Q Let's go back --

20 A For the last 14 years?

21 Q -- let's go back to the beginning. You've given
22 us quite a few documents I'll represent to you that have Mr.
23 Dolphin's name on them as being active in partnership
24 affairs.

25 A Okay.

Q Is that fair to say?

2 A Yes.

3 Q What was his role with the partnership let's say
4 starting in 1988?

5 A He was there representing his wife.

6 Q Okay. Did he serve as a consultant of some kind
7 to the partnership?

8 A There was a period of time where we engaged him to
9 go out to New Mexico I believe with Stephen Childs to take a
10 look at the location and to report back to the partnership.

11 Q At what time was that?

12 A It would have been in the early stages of the
13 ownership of the New Mexico 3. It would have been after we
14 were selected or after we received the -- I'm not specific
15 as to the date but it would have been after we would have
16 received possibly our construction permit to, in turn, go
17 out and take a look at the area so that the partnership
18 would have the ability to understand what the territory was
19 like, what the opportunities were like and to inform us at
20 that time.

21 Q Okay. Did Mr. Dolphin work with Mr. Kane?

22 A No, not to my knowledge.

23 Q I mean not in the same office but did he
24 coordinate with him in his activities on behalf of the
25 partnership?

1 A In what respect, sir?

2 Q Well, was Mr. Dolphin involved, for example, in
3 lining up someone to construct the system for the
4 partnership?

5 A I know that all of us were actively involved in
6 attempting to determine the correct way to proceed with the
7 construction of the partnership.

8 JUDGE STEINBERG: Do you mean the system?

9 THE WITNESS: Not the partnership, the system,
10 yes. To try and determine what was the best way to go
11 forward. There were numerous organizations out there
12 looking to construct the facilities and we were gathering
13 information as much as possible to determine the best route
14 to take to construct the system.

15 BY MR. EVANS:

16 Q Well, and did Mr. Dolphin participate in that
17 process?

18 A He may have assisted in gathering information for
19 us at that time.

20 Q Didn't Mr. Dolphin have more of a background in
21 cellular than any of the other partners?

22 A He did have some background in cellular which was
23 helpful.

24 Q And didn't the partners look to him for advice on
25 issues like getting someone to construct the system or

1 getting financing for the system?

2 A He, in turn, provided information as all of us did
3 to try and find the best way to construct the system.

4 Q Well, let me ask you this. Was he ever officially
5 denominated a consultant to the partnership? By that, was
6 he ever paid by the partnership for consulting services?

7 A Yes, he was.

8 Q Approximately what period was that?

9 A We would have paid him to go out to the New Mexico
10 site, reimburse him for his expenses and I believe we paid
11 him on an hourly basis.

12 Q Okay. Was he paid for anything else?

13 A I don't recall whether he was or wasn't. That one
14 is specific in my mind. I don't recall anything else.

15 Q Was he associated with Mr. Kane in any way?

16 A Not to my knowledge.

17 Q Was he involved in the decision as to how to
18 handle the foreign -- the alien partner issue?

19 A Was he what?

20 Q Involved in the decision of how to handle the
21 alien partner issue?

22 A Not to my knowledge.

23 Q Did he speak at the initial partnership meeting in
24 December '88?

25 A He introduced himself, as we all did. I don't